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Marrafflo Contracting, Inc. and Antonia Medina. Case 2–CA–30459

January 28, 1999

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

Upon a charge filed by Antonia Medina on May 27, 1997, the Acting General Counsel of the National Labor Relations Board issued a complaint on June 25, 1998, against Marrafflo Contracting, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (4) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On December 21, 1998, the General Counsel filed a Motion for Summary Judgment with the Board. On December 22, 1998, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated September 2, 1998, notified the Respondent that unless an answer were received by September 14, 1998, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a New York corporation with an office and place of business at 10-91 Jackson Avenue, Long Island City, New York, has been engaged in the business of providing janitorial services. Annually, the Respondent, in conducting its business operations described above, derives gross revenues in excess of \$50,000 and purchases and receives at its Long Island City facility goods and materials valued at more

than \$5000 directly from customers located outside the State of New York. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

On about January 23, 1997, the Respondent issued a memorandum to all its employees in which it promulgated the following rule:

Client Contact: None of our employees are to contact, communicate or engage in conversation with any client personnel. All questions, problems and/or comments must be directed to your supervisor or this office.

The Respondent has maintained this rule since January 23, 1997.

On about February 4, 1997, Charging Party Antonia Medina filed a charge against the Respondent with the Board in Case 2–CA–30069, alleging that the Respondent had violated Section 8(a)(1), (3), and (4) of the Act. Medina provided the Board with her work address at the client's premises.

On about February 13, 1997, the Respondent issued a written final warning to Medina for knowingly giving the Board the client's address and for thereby involving the customer in employment issues.

The Respondent issued the written final warning to Medina because she violated the rule set forth above and because she filed a charge against the Respondent, and also to discourage employees from engaging in these and other concerted activities.

CONCLUSIONS OF LAW

By promulgating and maintaining the "client contact" rule set forth above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) of the Act. In addition, by issuing a written final warning to Medina, the Respondent has been discriminating against employees for filing charges or giving testimony under the Act in violation of Section 8(a)(4) of the Act. The Respondent's unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) by promulgating and maintaining its January 23, 1997 rule concerning "client contact," we shall order the Respondent to rescind the rule. Further, having found that the Respondent has violated Section 8(a)(4) by issuing a

written final warning to Antonia Medina, we shall order the Respondent to rescind this warning, to remove from its files all references to the warning, and to notify Medina in writing that this has been done and that the warning will not be used against her in any way.

ORDER

The National Labor Relations Board orders that the Respondent, Marraflo Contracting, Inc., Long Island City, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Promulgating and maintaining the following rule:

Client Contact: None of our employees are to contact, communicate or engage in conversation with any client personnel. All questions, problems and/or comments must be directed to your supervisor or this office.

(b) Issuing written warnings to or otherwise discriminating against employees because they file unfair labor practice charges against the Respondent with the Board.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind its unlawful rule set forth above.

(b) Rescind the written final warning issued to Antonia Medina on February 13, 1997, and, within 14 days from the date of this Order, remove from its files any reference to that warning, and within 3 days thereafter, notify Medina in writing that this has been done and that the unlawful warning will not be used against her in any way.

(c) Within 14 days after service by the Region, post at its facility in Long Island City, New York, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees em-

ployed by the Respondent at any time since January 23, 1997.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. January 28, 1999

Sarah M. Fox,

Member

Wilma B. Liebman,

Member

Peter J. Hurtgen,

Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT maintain the following unlawful rule:

Client Contact: None of our employees are to contact, communicate or engage in conversation with any client personnel. All questions, problems and/or comments must be directed to your supervisor or this office.

WE WILL NOT issue written warnings to you or otherwise discriminate against you because you file unfair labor practice charges against us with the Board.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind our unlawful rule set forth above.

WE WILL rescind the written final warning issued to Antonia Medina on February 13, 1997, and, within 14 days from the date of this Order, remove from our files any reference to that warning, and within 3 days thereafter, notify Medina in writing that this has been done and that the unlawful warning will not be used against her in any way.

MARRAFLO CONTRACTING, INC.

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."